IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2639 OF 2007

Babli Anant Morye & Ors. ..Petitioners.
V/s.
Ratnakar Anant Morye & Ors. ..Respondents.

Shri S.G.Kandikar, adv. for the Petitioners.
Shri A.G.Kundekar, adv. for the Respondent No.1.

WITH
WRIT PETITION NO.2649 OF 2007

Nitin Murari Desai
through Power of Attorney
Shri Vijay Vinayak Sandye ..Petitioner.
Vs.
Shri Ratnakar Anant Moraye & Ors. ..Respondents.

Mr.S.V.Pitre, adv. for the Petitioner.
Mr.A.G.Kundekar, adv. for the Respondent No.1.

CORAM : J.H.BHATIA, J.
DATE : JULY 20, 2007.

P.C.:

1. Heard the learned counsel for the Parties in both the writ petitions.

2. The petitioner Nitin Desai in Writ Petition no.2649 of 2007 is original defendant no.5 in Regular Civil Suit No.44 of 2006 in which order of temporary injunction was passed by the lower Appellate Court. The said Nitin Desai has entered into agreement with original defendant no.1 Babli, who is petitioner in writ petition no.2639 of 2007 for plucking the mango

fruits from the trees situated in the suit lands. The learned counsel for all the parties admit that in Regular Civil Suit No.48 of 2006 filed by said Nitin Desai, the trial Court had passed the order restraining the respondent Ratnakar, who is original plaintiff in Suit No.44 of 2006, from causing any interference in the right of said Nitin for plucking the fruits. On the other hand, in Regular Civil Suit No.44 of 2006 filed by Ratnakar, all the respondents/defendants, including said Nitin Desai, are restrained from obstructing the plaintiff from possessing and enjoying the suit fields in common till the disposal of the suit. As these two orders passed in different suits are conflicting, with consent of the counsel for parties, following order is being passed:

(1). Nitin Desai shall be allowed to pluck the fruits of the mango trees situated in the suit property as per his agreement with the defendant no.1 Babli. However, he shall deposit contract money as per the terms of the agreement before the trial Court in Regular Civil Suit No.44 of 2006. The trial Court shall expedite the hearing and dispose off the Regular Civil Suit Nos.44 of 2006 and 48 of 2006 as early as possible. In case the plaintiff Ratnakar Moraye succeeds in establishing his claim, he will be entitled not only to share in the property as per his right but also his share in the

contract money deposited by Nitin Desai. In case Ratnakar succeeds, the defendant Babli will also be required to pay share of plaintiff Ratnakar in the same proportion out of the money, which he has already received from Nitin Desai as per the contract . In case Ratnakar fails to establish his claim in Regular Civil Suit No.44 of 2006, amount deposited in the Court shall be paid to Babli defendant no.1 or any other defendants, who may be found entitled to that property. The orders passed by the First District Judge, Sindhudurg in Miscellaneous Civil Appeal No.7 of 2007 stands modified accordingly.

3. With aforesaid directions, both these writ petitions stand disposed off.

[J.H.BHATIA, J.]